

Letter of Findings Number: 09-0744P
Underground Storage Tank Fees
For the Tax Years 2004-2007

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ISSUE

I. Underground Storage Tank Fee – Imposition.

Authority: IC § 6-8.1-1-1; IC § 6-8.1-5-1; IC § 13-23-12-1; IC § 13-12-12-4; 40 CFR § 280.22; 40 CFR Part 280, Appendix II; [328 IAC 1-3-3](#).

Taxpayer protests the imposition of penalties for unpaid underground storage tank fees.

STATEMENT OF FACTS

Taxpayer operates a gas station and convenience store in Indiana. At Taxpayer's gas station are three underground storage tanks (USTs). These USTs were purchased by Taxpayer and installed at Taxpayer's gas station in 2003, and the gas station itself was opened in April 2004. However, it was not until 2009 that Taxpayer discovered that it was required to have paid an annual UST registration fee for each year going back to 2004. Taxpayer paid the required fees, plus the Department's statutorily mandated 10 percent penalty and interest. However, the Department also assessed a total of \$60,000 in "environmental penalties" - \$6,000 for 2004; \$12,000 for 2005; \$18,000 for 2006; and \$24,000 for 2007. Taxpayer protests the assessment of these environmental penalties. An administrative hearing was held, and this Letter of Finding results.

I. Underground Storage Tank Fee – Imposition.

DISCUSSION

IC §13-23-12-1 imposes a fee on underground storage tanks. Although the Indiana Department of Environmental Management (IDEM) regulates underground storage tanks for the State, IC §13-12-12-4 mandates that the Department of Revenue collect and deposit the underground storage tank fees. IC § 6-8.1-1-1 defines "listed tax" to include "the underground storage tank fee ([IC 13-23](#))." The laws and regulations concerning the Department's collection of listed taxes apply to the Department's collection of the underground storage tank fees. All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1 (c).

The fee on USTs is imposed at IC §13-23-12-1 as follows:

(a) Each year the owner of an underground storage tank that has not been closed before July 1 of any year under:

(1) rules adopted under [IC 13-23-1-2](#); or

(2) a requirement imposed by the commissioner before the adoption of rules under [IC 13-23-1-2](#); shall pay to the department of state revenue an annual registration fee.

If an owner of an UST does not pay their annual registration fees described in IC § 13-23-12-1, the owner "shall be assessed a penalty of not more than two thousand dollars (\$2,000) per underground storage tank for each year that passes after the fee becomes due and before the fee is paid." IC § 13-23-12-7(a). This penalty is referred to as the "environmental penalty." [328 IAC 1-3-3](#)(e)(3). The Indiana Administrative Code clarifies this penalty, stating that:

For sites containing only tanks that were never registered, or sites containing only tanks for which no tank fees were paid when due, the penalty will be calculated at two thousand dollars (\$2,000) under [IC 13-23-12-7\(a\)](#) per petroleum underground storage tank per year that passes after each year's fee is due. [328 IAC 1-3-3](#)(f)(2)(A).

Because taxpayer owned three USTs, the Department assessed \$6,000 for 2004; \$12,000 for 2005; \$18,000 for 2006; and \$24,000 for 2007. This is because the penalty is cumulative. Per IC § 13-23-12-7(a), the penalty is "two thousand dollars (\$2,000) per underground storage tank **for each year that passes after the fee becomes due and before the fee is paid**" (**Emphasis added**). For example, if a fee on one of the tanks that was due in 2004 was not paid until 2008, then \$2,000 is assessed **for each year that passed** before that 2004 year fee was paid (\$2,000 for 2004; \$2,000 for 2005; \$2,000 for 2006; and \$2,000 for 2007). The same is true for the 2005 fee if it was not paid until 2008, the 2006 fee if it was not paid until 2008, and so on. With that being the case, the environmental penalties were assessed as illustrated below:

	2004	2005	2006	2007
2004 Fees	\$6,000	\$6,000	\$6,000	\$6,000
2005 Fees		\$6,000	\$6,000	\$6,000

2006 Fees			\$6,000	\$6,000
2007 Fees				\$6,000
Subtotal	\$6,000	\$12,000	\$18,000	\$24,000

Taxpayer argues that the company that sold the USTs to Taxpayer never informed Taxpayer that it was required to register and that the seller never registered the tanks for Taxpayer. Taxpayer believes that the seller should be liable for the penalties. Taxpayer points to 40 CFR § 280.22, which states in paragraph (g) that "[b]eginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section." Paragraph (a) states that "[a]ny owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit... a notice of existence of such tank system to the state or local agency or department designated... to receive such notice." The local agency designated by Appendix II to Part 280 is IDEM. Furthermore, Taxpayer cites to IDEM's instructions on its "Permit Guide: Underground Storage Tanks," which provides that "any person who sells a tank intended to be used as an UST must notify the purchaser of..." the obligation to notify IDEM "whenever an UST system has been brought into service, acquired by a new owner, upgraded, repaired, temporarily closed, undergoes a change-in-service, or is permanently closed."

The federal regulation and permit guide to which Taxpayer has cited relate to the requirement that when an UST is brought into use or service, the purchaser is required to notify IDEM of that fact. However, the environmental penalties at issue here have not been assessed for failing to notify IDEM that Taxpayer had brought into use or service three new USTs. The environmental penalties have been assessed because Taxpayer failed to pay four consecutive annual \$90 registration fees for each of its three USTs, all of which went unpaid until 2009. Furthermore, Taxpayer has cited to no law which states that the seller must also notify the owner of an UST that the owner must pay an annual registration fee, or for that matter, notify them on an annual basis of this obligation. The annual registration fee is clearly an obligation of the owner per IC § 13-23-12-1. Thus, the seller's obligations referred to in the federal regulation and permit guide to which Taxpayer cited have no application to the registration fee and the environmental penalties at issue in the instant matter.

Taxpayer further asserts that the seller claimed that either the seller or the contractor that it hired to install the USTs would have registered Taxpayer with IDEM. It is unclear whether by "registering" they meant they would have filed the initial paperwork to notify IDEM that Taxpayer brought into use or service three new USTs. If that is the case, the federal regulation and permit guide to which Taxpayer cited also do not state that the seller is obligated to inform IDEM themselves that a purchaser of an UST has brought into use an UST. The obligation of the seller is to inform the purchaser that the purchaser has to notify IDEM that it has brought into use an UST. In other words, even if the seller stated before or after the purchase that it would "register" Taxpayer with IDEM, this is not an obligation under the law. It was Taxpayer's legal obligation to notify IDEM that it had brought into use or service three new USTs by filling out the proper paperwork themselves, but again, this was not the reason that the environmental penalties were assessed.

Taxpayer also argues that because the Weights and Measures Program of the Indiana State Department of Health has been to the gas station many times to inspect the pumps, IDEM should have been aware that the USTs existed. Even if one could argue that by notifying one agency of the State that the tanks had been brought into use or service, this knowledge is then imputed to all other agencies of the State, the reason for the assessment of the environmental penalties is not that Taxpayer failed to notify IDEM the tanks had been brought into use or service, but that Taxpayer did not pay annual registration fees.

Finally, Taxpayer also maintains that a timely payment of the fees was made once Taxpayer was notified that registration fees were owed, and makes other arguments relating to equity in support of its position that the fees should be waived. However, the penalty has been assessed in accordance with what is provided for in the statute as passed by the legislature.

FINDING

Taxpayer's protest is respectfully denied.

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